IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

RFA No.16 of 1998 with Cross Objection No.141 of 1998, RFA No.1 of 1998 with CO No.157 of 1998, RFA No.4 of 1998 with CO No.235 of 1998, RFA No.13 of 1998 with C.O. No.158 of 1998 and RFA No.18 of 1998 with C.O. No.149 of 1998.

Reserved on:02.07.2007

Date of Decision:August 09, 2007

For title, please see over-leaf:

Coram

The Hon'ble Mr. Justice Kuldip Singh,Judge

Whether approved for reporting?[1] No

For the appellant]
] Please, see over-leaf:
For the respondents]

Kuldip Singh, Judge.

This judgment shall dispose of RFA No.16 of 1998 along with Cross Objection No.141 of 1998, RFA No.1 of 1998 with Cross Objection No.157 of 1998, RFA No.4 of 1998 Cross Objection No.235 of 1998, RFA No.13 of 1998 with Cross Objection No.158 of 1998 and RFA No.18 of 1998 with Cross Objection No.149 of 1998, which have arisen out of LAC No.50/93, LAC No.52/93, LAC No.54/93, LAC No.51/93 and LAC No.68/93 respectively decided by common award dated 6.9.1997 passed by learned District Judge, Chamba. The parties are referred in the same manner as in the impugned award.

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[1] ***Whether reporters of Local Papers are allowed to see the Judgment***? Yes

2. The facts, in brief, are that State of Himachal Pradesh for acquiring land of the land owners for Chamera Dam reservoir in *Mohal Palehi* issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') which was published on 13.6.1992. The Land Acquisition Collector (for short 'Collector') announced the award on 25.6.1993. The following are the details of land acquired and compensation awarded by the Collector as shown in Para-3 of the impugned award:-

Sr.No.	**Case No.**	**Title of petition**	**Area of Land and Name of structure acquired**	**Amount of Compensation Awarded.**
1.	50/93	Jaram Singh & Ors. v. NHPC etc.	0-13-0 Structures	Rs.9970/- Rs.65,326/-
2.	51/93	Dinesh & Ors v. NHPC etc.	0-3-5 Structures	Rs.2493/- Rs.94,904/-
3.	52/93	Sharif Mohd. v. NHPC etc.	14-17-0 Structures	Rs.1,85,260/- Rs.9068/-
4.	54/93	Nidhia & Ors. v. NHPC etc.	4-0-7 Structures	Rs.80,350/- Rs.83,219/-
5.	68/93	Lacho Ram & Ors. v. NHPC etc.	13-2-15 Structures	Rs.2,60,171/- Rs.1,34,260/-

3. The Collector awarded compensation at different rates in respect of different kinds of land, such details are given in Para-4 of the impugned award. The petitioners were not satisfied with the award, therefore, they made reference petitions under Section 18 of the Act to the Collector which were referred by the Collector to learned District Judge for adjudication. The petitions were consolidated vide order dated 13.6.1995 passed by learned District Judge in LAC No.50 of 1993. The

learned District Judge decided all the reference petitions by impugned award and announced the compensation awarded to the petitioners. National Hydro Electric Power Corporation (for short 'Corporation') has filed above appeals against the impugned award and prayed for setting aside the impugned award. The petitioners have filed cross objections in the appeals for enhancement of compensation.

4. I have heard the learned counsel for the parties and gone through the record.

5. The learned counsel for the Corporation has submitted that learned District Judge has erred in relying sale deed dated 4.2.1988 Ext.P-1 for assessing the market value of the acquired land. He has submitted that small area measuring 2 Biswas was sold vide sale deed dated 4.2.1988 Ext.P-1 and, therefore, learned District Judge has erred in relying sale deed Ext.P-1 for assessing the market value of large area under acquisition. He has also submitted that sale deed Ext.P-1 is otherwise not genuine transaction. The sale deed dated 28.8.1993 Ext.R-1 has been wrongly ignored for assessing the market value of the acquired land. The 50% increase in compensation for the structures standing on the acquired land is also wrong and contrary on to material on record. The learned counsel for the petitioners has submitted that learned District Judge has erred in allowing 65% deduction for assessing the market value of the acquired land on the basis of sale deed Ext.P-1. The petitioners have been awarded less compensation on account of structures which were standing on the acquired land, nothing has been awarded by learned District Judge for fruit and non fruit trees which were standing on the acquired land. He has submitted that petitioners are

entitled to enhancement of compensation in their respective cross objections.

6. PW-1 Jaram Singh, is one of the petitioners. He has stated that their land was acquired for Chamera Project. The petitioners had their cow sheds, *Gharats,* houses on the acquired land. They were also having fruit and non fruit trees on the acquired land. The acquired land was *Barani Awal do fasli.* The average yield per Bigha of maize was 8/10 quintals and that of wheat 7/8 quintals. In addition to this they used to cultivate vegetables on the acquired land. The acquired land is near to Mohal Chaklu and Mohal Raj Nagar. Due to acquisition, they had to leave the village and settle elsewhere. They were given Rs.20,000/- per Bigha whereas in Mohal Chaklu Rs.27,500/- per Bigha was given and in Mohal Raj Nagar Rs.40,000/- per Bigha was given. PW-2 Smt.Suraiya has stated that she has purchased 2 Biswas land from Umar Deen for a consideration of Rs.9000/- vide sale deed Ext.P-1. Ext.P-2 is the copy of Jamabandi of this land. PW-3 Umar Deen has stated that he has sold 2 Biswas land for Rs.9000/- to Smt.Suraiya vide sale deed Ext.P-1. PW-4 Pawan Kumar, Camp Clerk, DFO Chamba, has placed on record rates of non fruit trees fixed by the Government for the year 1992-93 vide Ext.P-3 and Ext.P-4. PW-6 Harish Kumar, Patwari, has placed on record average sale price of Mohal Palehi for the year 1992-93 Ext.P-5 and that of Mohal Chaklu Ext.P-6. He has also placed on record Ext.P-7 *Naksha Bartan.* PW-9 Om Parkash Sharma, Surveyor, Chamera Project has placed on record sanction orders Ext.P-10 to Ext.P-22 for payment of compensation regarding built up structures. PW-10, Milap Chand, Supervisor, Horticulture Chamera Project, has placed on record list of

fruit and non fruit trees which were standing on the acquired land along with their value Ext.P-23 to Ext.P-27. According to him, the rates of fruit trees were assessed as per 1966-67 H.P. Schedule. The petitioners have tendered in evidence Jamabandi Ext.PX of the land purchased by Suraiya. The Corporation has tendered in evidence sale deed dated 28.8.1993 Ext.R-1.

7. The sale deed dated 4.2.1988 Ext.P-1 is of Mauza Palehi and the acquired land is also situated in Mauza Palehi. PW-3 Umar Deen vendor and PW-2 Smt.Suraiya vendee of sale deed Ext.P-1 have been examined. The notification under Section 4 of the Act was published on 13.6.1992, thus, sale deed Ext.P-1 was executed more than four years and four months prior to the notification under Section 4 of the Act. It cannot be presumed that in order to enhance the market value of the acquired land the sale deed Ext.P-1 was executed between PW-3 Umar Deen and PW-2 Smt.Suraiya. Therefore, sale deed Ext.P-1 is a bonafide sale.

8. Smt.Dumnu vide sale deed dated 28.8.1993 Ext.R-1 has sold 1 Bigha 9 Biswas 10 Biswansis land in Mauza Palehi to Jaswant Singh for a consideration of Rs.12,000/-. It is, thus, clear that sale deed Ext.R-1 was executed after publication of notification under Section 4 of the Act in the present case. The State had acquired large areas for Chamera Dam reservoir in Mohal Palehi and adjoining Mohals and for this purpose many notifications under Section 4 of the Act were issued from time to time. The possibility cannot be ruled out that because of Section 4 notifications there was fall in market value of land in the area due to fear of land going in proposed reservoir in Mohal Palehi. In these

circumstances, the sale deed dated 28.8.1993 Ext.R-1 does not reflect actual market value of the land, rather it appears to be a distress sale keeping in view the acquisition of land for reservoir in that area. Moreover, vendor and vendee of sale deed Ext.R-1 were not examined in order to show that in fact this sale transaction was genuine and land covered by sale deed Ext.R-1 was comparable to the acquired land. The sale deed dated 28.8.1993 Ext.R-1, therefore, cannot be relied for assessing the market value of the acquired land.

9. The sale deed Ext.P-1 no doubt is of small area but the fact cannot be ignored that except for sale deed Ext.P-1 and sale deed Ext.R-1 the parties have not placed on record any other sale deed of Mauza Palehi executed prior to 13.6.1992 when the notification under Section 4 of the Act was published. The sale deed Ext.R-1 cannot be relied for assessing the market value of the acquired land for the reasons stated above. Now, only sale deed Ext.P-1 is available on record for assessing the market value of the acquired land. There is no absolute bar to rely small area transaction for assessing the market value of large area. The small area transaction can be relied for assessing the market value of large area but in that situation appropriate deduction is to be made. In ***Ravinder Narain & Anr. Versus Union of India [2003 (4) SCC 481],*** the Hon'ble Supreme Court in Para-7 has held as follows:

> "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small

> plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices."

10. The learned District Judge, in the impugned award, for assessing the market value of the acquired land has made 65% deduction from the value arrived at on the basis of sale deed Ext.P-1 and has assessed market value of acquired land at the rate of Rs.31,500 per Bigha of *Barani Awal* land as against the market value of Rs.20,000 per Bigha of *Barani Awal* assessed by Collector.

11. The learned counsel for the petitioners has submitted that after having assessed the market value of the acquired land on the basis of Ext.P-1 the learned District Judge should not have made further deduction of 65% for assessing the market value of the acquired land. This submission has no force. In ***Basavva (SMT) & Ors. Versus Spl. Land Acquisition Officer & Ors. [(1996) 9 SCC 640,*** the Hon'ble Supreme Court has held as follows:-

> "… … In ***Vasundara Devi*** case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex. P-10 were situated at far-flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e. 53+12%=65% in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal."

The learned District Judge has, thus, rightly assessed the market value of the acquired land after making 65% deduction from the market value of the acquired land assessed on the basis of sale deed dated 4.2.1988 dated Ext.P-1. It appears the deduction has been made by the learned District Judge keeping in view the fact that sale deed Ext.P-1 is of 2 Biswas of land and the total acquired land of the petitioners was 32 Bighas 16 Biswas and 7 Biswansis. The learned District Judge has, thus, rightly assessed the market value of the acquired land on the basis of sale deed Ext.P-1 after allowing 65% deduction.

12. The submission of learned counsel for the petitioners that learned District Judge should have allowed uniform rate for acquired land has also no force. The Collector has assessed the market value of the acquired land keeping in view the quality of land. The acquired land consists of big area and the acquisition is for reservoir. The petitioners have not independently proved that whole of the acquired land was having uniform potential value. The classification of acquired land for purposes of compensation by the Collector and the District Judge, thus, cannot be faulted.

13. The learned counsel for the petitioners has submitted that learned District Judge has awarded no compensation to the petitioners for fruit and non fruit trees which were standing on the acquired land nor market value of such fruit and non fruit trees has been assessed by learned District Judge in the impugned award. In ***Collector LAC, Mandi versus Karam Singh and Others [Latest HLJ 2000 (HP) 694]***, a Division Bench of this Court has held that compensation for land and fruit trees can be assessed separately.

14. In the present case, the comparable sales method was adopted for assessing the market value of the acquired land. The petitioners except for producing list of trees standing on the acquired land have not produced any other material on record to assess the market value of the acquired land with trees separately. The petitioners were satisfied with the comparable sales method for assessing the market value of the acquired land with trees. There is no clinching evidence on record to assess the market value of the trees separately at the time of publication of notification under Section 4 of the Act. The petitioners before the learned District Judge did not press for separate assessment of trees which were standing on the acquired land and that is why there is no reference in the impugned award to this effect. In the cross objections, it is not the case of the petitioners that they pressed for assessment of market value of acquired land and trees separately before learned District Judge but despite that learned District Judge did not consider their case for separate assessment of trees. In these circumstances, it is reasonable to infer that petitioners had given up, abandoned before learned District Judge separate assessment of trees which were standing on the acquired land. Once they have given up, abandoned separate assessment of trees standing on the acquired land in reference petitions they cannot now put such claim in the appeal. In ***Dr.Mahesh Chand Sharma Versus Smt.Raj Kumari Sharma & Others [AIR 1996 SC 869],*** it has been held that a party who abandons a particular plea at a particular stage cannot be allowed to re-agitate in the appeal. Therefore, the petitioners cannot be permitted to put forward claim for fruit and non fruit trees standing on the acquired land by way of

cross objections. The petitioners are not entitled to enhancement of compensation for fruit and non fruit trees separately.

15. The value of the superstructures was assessed by the project authorities on the basis of 1987 schedule of rates and no premium was given on 1987 schedule of rates even though the property was acquired vide notification dated 13.6.1992 under Section 4 of the Act. A feeble attempt was made by the learned counsel for the Corporation that petitioners are not entitled to compensation for the structures built on the acquired land, his submission is that market value of the structures built on acquired land is included in the market value of the land. This argument of the learned counsel has no force. The structures on the acquired land are on very small area. The valuation of the structures has been done separately by the project authorities themselves. There is no absolute bar that no valuation of the structures standing on the acquired land can be done separately, it depends upon the facts of the case, where acquired area is large and structure on such acquired area is on small area then land and structure can be assessed separately. In ***Kirtan Tandon Versus Allahabad Development Authority & Another [(2004) 10 SCC 745],*** the Supreme Court has held as follows:-

> "… …. But there is no hard and fast rule that land and building must be valued as one unit. They can be separately assessed if the large portion of the land is lying vacant and is capable of better use as stated by Venkatachaliah, J. (as His Lordship then was) in *Administrator General of W.B. v. Collector, Varanasi* and

it will be useful to extract the relevant part of AIR para-8 of the Report: (SCC pp.159-60, para 17)

> 'Usually, land and building thereon constitute one unit. Land is one kind of property; land and building together constitute and altogether different kind of property. They must be valued as one unit. But where, however, the property comprises extensive land and the structures thereon do not indicate a realization of the full developmental potential of the land, it might not be impermissible to value the property estimating separately the market value of the land with reference to the date of the preliminary notification and to add to it the value of the structures as at that time. In this method, building value is estimated on the basis of the prime cost or replacement cost less depreciation. The rate of depreciation is, generally, arrived at by dividing the cost of construction (less the salvage value at the end of the period of utility) by the number of years of utility of the building. The factors that prolong the life and utility of the building, such as good maintenance, necessary influence and bring down the rate of depreciation."

In the present case, structures are on very small area in comparison to whole of the acquired land, therefore, land and structures can be assessed as different units.

16. It is common knowledge that there is general trend of increase in cost of construction. The State has acquired land and structures under different notifications for construction of reservoir of Chamera Dam. In

RFA No.72 of 1998, along with RFAs No.75, 56 and 63 of 1998 decided on 30.5.2007 and RFA No.127 of 1998 decided on 1st June, 2007, this Court has approved 50% increase in market value of the structures over and above the 1987 schedule of rates. The land and structures in those cases were also acquired for construction of reservoir of Chamera Project on the basis of notifications under Section 4 of the Act dated 6.6.1992 and 16.6.1992. In the present case, the notification under Section 4 is of 13.6.1992, therefore, 50% increase given by the District Judge for assessing the market value of the structures over and above the 1987 schedule of rates is just, reasonable and not arbitrary. The claimants / petitioners have not otherwise independently proved that at the time of notification under Section 4 of the Act what was the value of their superstructure standing on the acquired land.

17. The result of above discussion is that RFA No.16 of 1998 along with Cross Objection No.141 of 1998, RFA No.1 of 1998 with Cross Objection No.157 of 1998, RFA No.4 of 1998 Cross Objection No.235 of 1998, RFA No.13 of 1998 with Cross Objection No.158 of 1998 and RFA No.18 of 1998 with Cross Objection No.149 of 1998 are dismissed. No costs.

August 09, 2007 ***(Kuldip Singh), J.***

(soni)

1. ***RFA No.16 of 1998 with Cross Objection No.141 of 1998:***

National Hydro Electric Power Corp. …Appellant.

Versus

Nikki Devi & Ors. ..Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Jagan Nath vice Mr.Anand Sharma, Advocate, for LRs of respondents No.1 & 2 and for respondents No.3 and 4.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.5 and 6.

2. ***RFA No.1 of 1998 with Cross Objection No.157 of 1998:***

National Hydro Electric Power Corp. …Appellant.

Versus

Sharif Mohd. & Ors. ..Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Jagan Nath vice Mr.Anand Sharma, Advocate, for respondent No.1.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.2 and 3.

3. ***RFA No.4 of 1998 with Cross Objection No.235 of 1998:***

National Hydro Electric Power Corp. …Appellant.

Versus

***Nidhia & Ors*. …Respondents.**

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Jagan Nath vice Mr.Anand Sharma, Advocate, for respondents No.1 to 3.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.4 and 5.

4. ***RFA No.13 of 1998 with Cross Objection No.158 of 1998:***

National Hydro Electric Power Corp. …Appellant.

Versus

Dinesh & Ors. …Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Jagan Nath vice Mr.Anand Sharma, Advocate, for respondents No.1 to 4.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.5 and 6.

5. ***RFA No.18 of 1998 with Cross Objection No.149 of 1998:***

National Hydro Electric Power Corp. …Appellant.

Versus

Karmi Devi & Ors. …Respondents.

For the appellant: **Mr.Rajnish Maniktala, Advocate.**

For the respondents: **Mr.Jagan Nath vice Mr.Anand Sharma, Advocate, for LRs of respondent No.1 and respondents No.2 and 3.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondents No.4 and 5.

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